

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**
Bankruptcy Judge Elizabeth E. Brown

In re:

NANCY JOSEPHINE ROPER,

Debtor.

Bankruptcy Case No. 15-16638 EEB

Chapter 13

**ORDER REGARDING DEBTOR'S ELIGIBILITY FOR DISCHARGE UNDER 11 U.S.C.
§ 1328(a)**

THIS MATTER comes before the Court on the Debtor's Certification to Obtain Discharge, the Trustee's Statement Regarding Debtor's Eligibility for Discharge (the "Statement"), the Response to Notice of Final Cure Payment ("Response") filed by Westerra Federal Credit Union ("Westerra"), and the Trustee's brief in support of Debtor's discharge. At issue is whether the Debtor is entitled to a discharge when she has not paid all assessed, postpetition charges on her mortgage loan.

In order to obtain a chapter 13 discharge under 11 U.S.C. § 1328(a), a debtor must complete all payments and any other requirements of her confirmed plan. In *In re Hoyt-Kieckhaben*, 546 B.R. 868, 874 (Bankr. D. Colo. 2016), this Court ruled that this includes not only the payments to the trustee but also the regular, postpetition payments a debtor makes directly to a creditor if the debtor's plan obligated the debtor to make those payments. In this way, the confirmed plan, as it may be amended from time to time, is a binding contract between a debtor and her creditors. If she wants to obtain a chapter 13 discharge, the debtor must fulfill *all* her plan obligations.

Here, the Statement and the Response indicate that the Debtor made all the trustee payments and all the postpetition direct mortgage payments,¹ but she did not pay \$1,370 in fees required by the underlying mortgage agreement. According to the Court's record, Westerra gave notice of additional fees totaling \$1,470 in 2015. The Debtor did not contest this amount by the deadline set forth in Fed. Bankr. R. 3002.1(e). Nor did she modify her plan to include these fees.

Resolution of this matter requires the Court to analyze the interplay between Rule 3002.1 and §§ 1322(b)(5) and 1328. Congress adopted Rule 3002.1 in 2011 and later amended it in 2016 and 2018. Its stated purpose was to "aid in the implementation of § 1322(b)(5), which permits a chapter 13 debtor to cure a default and maintain

¹ Debtor's First Amended Plan, filed on August 19, 2015, at Docket #15, provided in part V.A. that she would make payments of \$1,637 directly to Westerra for sixty months. This amount does not reflect a cure of past due payments, but only the regular monthly mortgage payment.

payments of a home mortgage over the course of the debtor's plan." Fed. R. Bankr. P. 3002.1 advisory committee's note to 2011 adoption. It fosters this goal by requiring the secured creditor to give notice to the debtor of any interest rate or escrow changes and the assessment of any additional fees, expenses, or other charges that may accrue on a debt secured against her home. If the creditor gives notice and the debtor either pays the additional amounts or obtains a ruling that they are not validly assessed, then she will exit chapter 13 assured that she is current on this debt. The rule does not allow the secured creditor to silently accrue additional amounts and then spring a "gotcha" foreclosure after the debtor has completed her plan and emerged from bankruptcy protection.

The rule sets forth procedures and several deadlines to accomplish its mission. The secured creditor is required to give timely notice of any loan changes or assessed charges. If the change is to the interest rate or escrow amounts, the creditor must notify the debtor no later than twenty-one days before the new payment amount is due. Rule 3002.1(b). If it involves an additional charge, such as a late charge or attorney fees, then the creditor must give notice within 180 days after the creditor has incurred the charge. Rule 3002.1(c). If the debtor disputes any of the additional charges, she has only one year in which to request a court ruling on them. Rule 3002.1(e).

The rule does not specify any deadline by which the debtor must pay the additional interest or charges. Nor does it specify any consequences for the debtor's failure to pay. Instead it sets up an additional procedure at the end of the plan. Within thirty days after the end of the plan, the trustee must give notice to the secured creditor that the debtor has cured her prepetition default pursuant to the terms of the plan. Rule 3002.1(f). Once served with this notice, the creditor has twenty-one days to file a response contesting the debt has been fully cured.

At this point, the only relevant issue *for the court* is whether the debtor has fulfilled the obligations of her plan. If the response filed indicates that the debtor did not make all the plan payments, then the debtor will not receive her discharge. If, however, the statement indicates that the debtor did make all the *plan payments*, then she will receive her discharge, even if she has not yet made all the required secured creditor payments.

Rule 3002.1 does not go so far as to say that nonpayment of additional interest or charges will prevent the entry of a debtor's discharge. It is § 1328(a) that governs the entry or denial of discharge. It requires completion of "all payments *under the plan*." (emphasis added). If additional postpetition interest and fees became a part of a debtor's confirmed plan by subsequent modification, then nonpayment will prevent the entry of discharge. On the other hand, if the plan never addressed the additional postpetition interest or charges, then they will not impact discharge. In fact, the chapter 13 general discharge does not even apply to long-term debts, such as the home mortgage. 11 U.S.C. § 1328(c)(1).

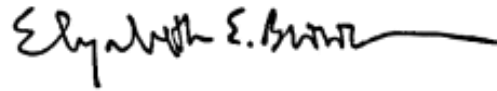
Thus, Rule 3002.1 is only relevant to the grant or denial of discharge if its application reveals that the debtor did not make all required plan payments. If there are

other amounts owed under the mortgage loan agreement that never made their way into the plan, as is the case here, they will have no bearing on the debtor's eligibility for discharge. They do, however, remain highly relevant *to the debtor*. Rule 3002.1's purpose of preventing a "gotcha" foreclosure following the entry of discharge will be thwarted if the debtor ignores a secured creditor's notice of changes and additional charges. Those additional amounts will remain due and owing and the general discharge will not apply to them. Thus, a debtor ignores these notices at her own peril.

Accordingly, it is hereby ORDERED that the Clerk of the Court shall enter Debtor's discharge under 11 U.S.C. § 1328(a) by separate order.

DATED this 10th day of November, 2020.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Elizabeth E. Brown", with a long horizontal flourish extending to the right.

Elizabeth E. Brown, Bankruptcy Judge